



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0489]

Commercial Driver's License Standards: Application for Exemption; State of Idaho, Idaho Transportation Department (ITD)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces that it has denied an application for exemption from the requirement that third-party commercial driver's license (CDL) testers maintain a bond in an amount determined by the State that employs them. The bond is intended to be sufficient to pay for re-testing drivers in the event that the third party or its examiners is involved in fraudulent activities related to CDL skills testing. The Division of Motor Vehicles, Idaho Transportation Department (ITD) submitted the application for exemption. FMCSA published ITD's application, reviewed the public comments received, and denied the application because available information did not allow the Agency to conclude that the proposed exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained absent the exemption.

DATES: FMCSA denied the application for exemption by letter dated August 8, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 614-942-6477. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

ITD Application for Exemption

The Idaho Transportation Department (ITD) is responsible for State transportation infrastructure and oversees the disbursement of Federal, State, and grant funding for Idaho transportation programs.

The ITD applied for an exemption from the regulations in 49 CFR 383.75(a)(8)(v) that require third party testers to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting

skills testing of CDL applicants. The ITD requested the exemption because the regulation creates a financial hardship for testing examiners who must be bonded but conduct only a few tests monthly. ITD said that the State has had no instances of fraud in its third-party testing organizations.

Public Comments

On March 9, 2016, FMCSA published in the **Federal Register** notice of the ITD application and requested public comment (81 FR 12443). The Agency received three comments, all of which opposed the exemption. One commenter objected to all exemptions in general. The Commercial Vehicle Training Association stated that exempting Idaho from the bond requirement is unnecessary because the State has the authority to determine what the amount of these bonds should be. Therefore, if Idaho determines that the current bond requirement is too high, it can simply reduce the requisite amount. The Surety and Fidelity Association of America listed various reasons why a surety bond has value to the State and is in the public interest.

No commenters supported the ITD exemption request.

FMCSA Decision

The Agency's decision is based upon the information provided by the applicants, and its review of comments received in response to the **Federal Register** notice. The Agency concluded that the ITD application failed to demonstrate how by eliminating the requirement for third party testers to initiate and maintain a bond would achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. The Agency believes the regulation provides the proper balance, protecting the public interest while imposing only minimal costs on small third-party testers. The bond requirement is a business standard that not only provides a higher degree of

assurance that the CDL tests performed meet FMCSA and State requirements, but that the tests are also performed by qualified individuals as agents of the State. ITD did not provide any data, studies or research supporting its request, or explain why a reduced bond amount would not achieve the same result as an exemption. Therefore, the Agency cannot determine that ITD's proposed exemption would meet the statutory requirement to maintain the required levels of safety. Accordingly, FMCSA denied ITD's application for exemption by letter dated August 8, 2016.

Issued on: September 14, 2016

Larry W. Minor
Associate Administrator for Policy

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